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U.S.

061693 2007

No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MAHABIR AND SHELLIELLE NANAN

Petitioner(s)

VS.

STATE FARM FIRE & CASUALTY COMPANY

Respondent(s)

On Petition For Writ Of Certiorari
To The Supreme Court of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether there can be a valid legal determination, drastic as dismissal with prejudice, in the absence of proof evidence, in instances where a trial court disobeyed the legal essential regulations, overriding such decision, when such authority, requires the existence of substantiation in the preponderance.

2. Whether trial court judge and Respondent counsel's conduct towards Petitioners at the July 18th 2005 motion hearing, which was the subject matter of the proceeding, abridges Petitioners first, fourteenth amendment freedom to the constitution of the United States and the universal declaration of human rights.

3. Whether the inappropriate acts portrayed by Respondents counsel, Appellate Court clerk, violated the code of professional conduct, also constituting perjury, intolerable on the basis such acts committed at the hands of officials sworn to uphold the laws of this state.

4. Whether the trial court dismissal of Petitioners law-suit, appellate court's remand, re-docket, dismissal, of Petitioners appeal case herein. in statutory language, fatally defective to the commands of the constitution of the United States.

5. Whether Supreme Court of Georgia declination of intervention to the concerns, gravity, of Petitioners circumstance, on these grounds consistent with the provisions of law, in the legal and constitutional sense.

6. Whether the state of Georgia decisions, consistent with the first and fourteenth amendment to the constitution of the United States, utilize Ad Hoc procedures to enjoin dissemination of presumptively protect fourteenth amendment freedom where there is statutory authoritative decision authorized appropriate procedural safeguards.

7. Whether trial court erred in failing to oblige Respondents to meet the burden of proof, dismissing Petitioners law-suit with prejudice, despite Petitioners compliance with the court's legal orders.

8. Whether the illegitimate perfection of fictitious court orders at the appellate courts level prohibited as a matter of law.

9. Whether trial judge legally authorized to render dismissal decision in the presence of a pending motion of recusal, in cases where the law prohibits his ability to act upon the merit of a case, until final determination is obtained from another legal authority.

PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 14.1, Petitioners states that all parties to the proceedings in the court whose judgment is sought to be reviewed are listed in the caption.

RULE 29.6 STATEMENT

There is no corporate disclosure statement to include as Petitioners are not corporation.

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PETITION FOR A WRIT OF CERTIORARI

Mahabir and Shellielle Nanan, Petitioners herein, pray that a Writ of Certiorari issue to review the judgment of Supreme Court of Georgia in this case on 02-05-07.

OPINION BELOW

The Cobb County state court herein, dismissed Petitioner's lawsuit with prejudice on 08-25-2005 for alleged failures to attend deposition and home inspection ordered by the court. Petitioner's respectfully affirmed; dismissal was un-lawful due to Petitioners compliance with court orders and further affirmed, Petitioners were deposed by lead counsel for State Farm Fire & Casualty, Mr. Geno Montoya, of Swift, Currie, McGhee & Hiers, law- firm whom in violation of the law, deposed both petitioners at the deposition, while concealed deposition transcript, filing false pleadings with the court, swearing falsely under oath thus obtaining dismissal against Petitioners by corrupt means. Furthermore, at the time dismissal was rendered, a "motion of recusal/ disqualification" was pending against the presiding judge for his involvement in the wrongful violation of Petitioners constitutional rights during a motion hearing held on 07- 18- 05. In defiance of the law he was affirmed to preserve, the honorable judge Darden violated the entire recusal procedures implemented under Uniform Superior Court Rules 25, 25.1, 25.2, 25.3, and 25. 4.

The pertinent provisions of Rule 25.3 requires the presiding judge to "temporarily cease to act upon the merits of the case', allowing another judge to hear the recusal motion," meaning that, before said

judge could continue to govern the proceedings, or to exercised legal authority to render any further decisions on the merit of the case, the law requires, a decision on the recusal motion exceeding any further rulings. The contrariness surrounding this matter is the fact that trial court disregarded the entire recusal procedures, in direct contradiction of the law, failed to oblige counsel for Respondent State Farm, (a major corporation) to meet the "burden of proof'. In further insolence of the law, your honor dismissed Petitioners law-suit with prejudice on-08-05-05, while rendering a discordant decision on his own recusal On 08-30-05, five days after Petitioners law-suit was already terminated from the court, thus declaring the dismissal un-lawful, as trial court was bounded by law to render a decision on the recusal motion, prior to dismissal. The opinion of the trial court is un-reported, but copies of the dismissal and recusal orders are re-produced and affixed hereto as Appendixes "A and B".

Petitioners herein, appealed the case to the Appellate court of Georgia. The appellate court on the contrary, violated Petitioners constitutional rights to due process of law, failing to determine the appeal on it's merit, controversially dismissing the pending appeal case from its court, while remanding said dismissed case back to the trial court based on fraudulent allegations of "missing transcript" an act which not only divergent to the laws and civil procedures governing the state of Georgia, but also the Appellate Courts' own implementations.

A copy of the appellate court's order/ extract is re-produced and affixed hereto as Appendix "D".

Under the circumstance, it is un-imaginable that the Supreme Court would deny Petitioners petition for certiorari. A copy of the Supreme Courts denial of certiorari is re-produced and affixed hereto as Appendix "E". Never the less, a" motion for re-consideration" was filed with the Supreme Court, which was denied despite Respondents State Farm's failure to respond. A copy of the Supreme Courts order dismissing the "motion for reconsideration" is re-produced and affixed hereto as Appendix "F". The legalities of the Supreme and Appellate Court orders remained un-answered, as said orders were not perfected in accordance with court rules.

JURISDICTION

The Supreme Court denied Petitioners petition for certiorari on January 06, 2007. Petitioners filed a motion for "Reconsideration" with the Supreme Court of Georgia on or about 01- 16- 2007, that petition was denied on 02-05- 2007. This petition for a Writ of Certiorari to the United States Supreme Court is filed within ninety (90) days of that date. Jurisdiction is invoked under 28 U.S.C § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Universal declaration of Human Rights, Articles 1, 6, & 7.

United States Constitution, Amendment I.

United States Constitution, Amendment X1V.

Provisions of Deprivation of Rights, Under Color of Law.

Provisions of Conspiracy against Rights.

Provisions of the Code of Judicial Conduct

STATEMENTS OF THE CASE

Petitioners Mahabir and Shellielle Nanan herein, suffered a devastated fire disaster to their Jonesboro Georgia residence on 02-21-2003. Respondent State Farm Fire & Casualty Company herein, breached the terms and agreement of the contract, failing to compensate Petitioners for their losses, leaving the financial burden and responsibilities, which was the contractual obligations of Respondent upon Petitioners. At the expiration of limitation, twelve months (12), Petitioners herein, filed law-suit against State Farm Fire & Casualty Company for failure to compensate and other violations. In an act of insincerity, State Farm aided and abet multiple outside companies, Rollin Construction, and Adjusters International in filing fraudulent insurance claims against Petitioners, claming these companies performed contractual work on Petitioners behalf, despite clear knowledge the claims were false. In a deliberate act aimed at securing funds on those companies' behalf, Respondent State Farm herein, filed an interpleaded with the court, naming those companies as party to the interpleader.

The trial court proceedings herein were held at the Cobb County State Court, before the honorable judge, David P. Darden. Petitioners suffered tremendous disappointments, as they were victims, not only at the hands of State Farm and their conspirators, but also the court of law which Petitioners relied deeply to perfect equality and justice to all. During court proceedings, trial court exercised clear acts of biasness/ prejudice towards Petitioners, while extending superiority towards counsel for Respondent State Farm Fire & Casualty, and party to interpleaded Rollin Construction. The court herein, permitted Rollin Construction and their attorney to be absent from **all** court proceedings, failing to dismiss Rollin's claim at Petitioner legally repeated requests, leave standing, the un-merited possibility of Rollin and their attorney to possible obtain funds resulting from Petitioners law-suit; despite the essential reality Petitioners never confronted these accusers in court. Subsequently, on 07-18-05, during a motion hearing held by the court, presiding judge exercised further acts of prejudice, discrimination, towards Petitioner in open court, at the recommendation of Respondent State Farm's counsel. Your Honor exploded upon Petitioner Shellie Nanan repeatedly, violated Petitioner freedom of speech, denied all motions filed by Petitioners unequivocally, threatened to impose sanctions upon Petitioner, if she maintained request to be been heard.

The actions of the court herein, deemed un-constitutional, as these mentioned injustices occurred in the presence of the judge's court employees and independent witness whom was present during court

proceeding. Such acts resulted in the wrongful infliction of public humiliation, intimidation, and fear upon Petitioner, while Respondents State Farm's attorney was obliged ample privilege to execute his arguments in lengthily fashion, alleged false allegations against Petitioners, while Petitioner was restricted to frame a defense to the false allegations orchestrated against them. A copy of a letter mailed to the presiding judge by independent witness whom witnessed your honor's demeanor towards Petitioner was filed with the court. Hereto re-produced and attached as Appendix "C".

Under the supervision of the trial court, counsel for Respondent State Farm Fire & Casualty Company herein, violated the laws he was avowed to preserve by deposing Petitioners at the court ordered deposition held on 08-05-05 whilst, informing the court Petitioners failed to be deposed, filing false pleadings in court record, swearing falsely under oath, tampering with material evidence, by failing to file evidence of deposition with the court, further involved in ex-parte communication with the presiding judge, also, his willful abuses of the discovery process repeatedly. Despite these blatant injustices, trial court herein, declined intervention, leaving the attorney un-supervised where he was able to inflict further acts of cruelty and dehumanizing conducts towards Petitioners.

As a result of these mentioned injustices, Petitioners lawsuit was un-lawfully dismissed with prejudice, for failure to attend deposition and home inspection, despite Petitioners diligent compliance with the court's order. The trial court herein, disregard

Petitioners merited claim filed in court record; Petitioners were deposed by the same attorney whom filed the falsified pleadings with the court.

Under this circumstance, Respondent State Farm Fire and Casualty was able to prevailed against Petitioners un-lawfully, failing to compensate Petitioners for their losses, violating Petitioners constitutional rights, thus inflicting further acts of undo hardship upon Petitioners, with the assistance of trial court. Until present, four (4) years after the disaster, Petitioners is yet to receive compensation for their loss

REASONS FOR GRANTING THE PETITION

1. THE BURDEN OF PROOF IS UPON THE PARTY MAKING THE ALLEGATIONS. TRIAL COURT FAILED TO OBLIGE RESPONDENT TO MEET SUCH BURDEN UNDER THE LAW. DUE TO THE FAILURE, RESPONDENT'S ATTORNEY WAS PRIVILEGED TO FILE FRAUDULENT PLEADINGS IN COURT RECORD, TAMPERED WITH MATERIAL EVIDENCE, SWORN FALSELY UNDER OATH, THUS OBTAINING DISMISSAL WITH PREJUDICE AGAINST PETITIONERS UNDER FRAUDULENT PRETENSES. A SERIOUS VIOLATION OF LAW IN ALL CASES.

Petitioner's lawsuit was dismissed for alleged failures to attend deposition and home inspection ordered by the trial court. The statue governing the code is § O.C.G.A.9-11-37. The judgment

against Petitioners herein, is in direct conflict with other cases decided in similar courts. Trial court dismissed Petitioners lawsuit solely on grounds of hearsay, circumstantial, and illegitimate reasons, contrary to the rules of law. Petitioners respectfully declared the dismissal rendered un-lawful, in three officially imperative areas. (1) Under Georgia law, "a motion to dismiss" can only be granted in compliance with Uniform Superior Court Rules 6.3 and 6.4. The rules governing dismissal are properly set forth on pages 682 & 683 of the Georgia Court Rules and Procedures, and stated, "Prior to filing any motion seeking resolution of a discovery dispute, counsel for the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the matter involved, at the time of filing the motion, counsel shall also file a statement certifying that such conference had occurred and that the effort to resolve by agreement the issues raised failed". Rule 6.3 does not require oral argument but, the law rest such decision solely upon the presiding judge to render such necessity, and in this case, the court ruled, that prior to issuing its decision; " the court would hold a special hearing to determine evidence presented." Divergent to the rules of law, counsel for Respondent failed to comply with the rules set forth. The presiding judge on the contrary, defied the courts own essential ruling to hold a special hearing, as previously ruled, and also failed to verify whether Respondent's counsel executed good faith and whether such letter was filed in court record, in compliance with the rules of law.

The second issue surrounding this matter, at the time dismissal was rendered; a pending motion of recusal/ disqualification, in opposition to the presiding judge for his role in violating Petitioner constitutional rights was enforceable. In defiance of the law, trial court violated the entire recusal procedure contained in Uniform Superior Court Rules 25, 25.1, 25.2, 25.3. & 25.4, dismissing Petitioners lawsuit with prejudice on 08-25-05, while rendering a controversial decision on his own recusal, on 08-30-2005, five days after Petitioners law-suit was already terminated from the court. Petitioners contend such action by the trial court unlawful, as the law prohibits Your Honor from rendering decision on his own recusal and violating court rules and laws. A petitioner respectfully submits that even if Your Honor was legally authorized to render such decision on his own conduct, the recusal motion must be rendered prior to dismissal. See State v. Fleming, 245 Ga. 700 (1980).

Thirdly, in its dismissal ruling entered on 08-25-2005, trial court failed to execute the rules of law by failing to oblige Respondents State Farm to meet the burden of proof, as implemented pursuant to §O.C.G.A. 24-4-1 (GCA 38- 103) & § OCGA 24-4-2 (GCA 104). [1]

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[1] Petitioners draw reference to Respondents failure to execute and file good faith letter in accordance with court Rule 6.3. Such compliance was unachievable, due to Petitioners compliance with the court's legal orders. Furthermore, Respondents defied court orders repeatedly, failing to conduct the initial deposition and home inspection in May of 2005, unduly faulting such malfunction upon Petitioners. Subsequently, deposed Petitioners at the second deposition hearing held on 08-5-05, falsely accusing Petitioners of failing to depose, concealing said deposition evidence, obtaining false relief under fraudulent pretenses.

Pursuant to the rules of law, unless other wise provided, the "burden of proof" which never reallocates, indisputable lies upon the party whom constructed the allegations, and as result of the trial court's failures, it is reasonable to conclude, had the trial court administered the laws appropriately; dismissal with prejudice would have been prohibited. Furthermore, it is contrary to the rules of law, our courts reliance solely on hearsay/ circumstantial evidence in rendering decisions as drastic as dismissal with prejudice, while the law clearly affirms such action inadmissible in the court of law. See *State v. Fischer* 230 Ga. App. 613, 497 S.E. 2d 79 (1998); *Coach v. State* 246 Ga. App. 106,539 S.E. 2d 609 (2000). "Hearsay has no probative value and is inadmissible" §O.C.G.A 24-1-1 (GCA 38- 301) defines hearsay evidence as "that which derives its value not from the credit of the witness, but rest mainly on the veracity and competences of other persons. On other hand, direct evidence is explicated in §O.C.G.A 24-1-1 (GCA 38-102), as" that which immediately points to the question at issue". Petitioners respectfully submit that the legal instructions and implementations of "burden of proof" reveal no vagueness or ambiguousness relating to the definition of proof, the law specifically requires the party making the assertions meet not only the burden of proof but also the burden of pleading and persuasion before relief can be obtained. Which basically means, the party making the assertions must prove all allegations, by producing that degree of legally - sufficient evidence to persuade the trier of fact, followed by the burden of pleading.

The burden of producing evidence, commonly referred to as the burden of going foreword with the evidence, falls initially upon the party who bears the burden of persuasion, which is State Farm Fire and Casualty Company, however, when the burden is met by the introduction of evidence from which the trier of fact could infer the fact alleged, only then would the burden of evidence fluctuate upon Petitioners, and in this particular circumstance, Respondent State Farm failed to produce a scintilla of evidence that would legally warrants the production of evidence from Petitions, nevertheless, the facts must be essentially outlined that Petitioners met their duty under the law by framing an affirmative defense, filed in their pleading with the court, in accordance with § O.C.G.A. 24-1-1.

11. THE TRIAL COURTS DECISION IS WRONG

The first legal principle, and probably the most essential, Petitioners pleaded an affirmative defense therefore, is valid consideration sufficient to encompass a declaration under the applicable provisions §O.C.G.A 24-4-1 "burden of proof". The trial court on the contrary illegitimately shifts such burden, which was the responsibility of Respondents upon Petitioners, and stated in the court's dismissal decision entered August 25, 2005. "Defendant State Farm presented evidence to the court that Defendant appeared at Plaintiffs home for the court ordered inspection on August 1, 2005 and at that scheduled time that morning and furthermore that Plaintiffs did not come to the door, or answer Defendants phone calls. Furthermore, Defendant counsel was prepared to depose Plaintiffs at his office, at the court ordered

time, on August 5, 2005, and Plaintiffs failed to be deposed". Petitioners respectfully affirm, not only are the statement of the trial court highly speculative, in the legal sense, deemed circumstantial as trial court could not factually assume the intentions of defense counsel, on this note, Petitioners attached Appendix "N", proof of deposition. Such revelation un-questionably contradicted the declaration of the court that "Petitioners failed to be deposed". Petitioners further contend that contained in their affirmative defences, filed with the court, Petitioners were consistent in informing the court, Petitioners were deposed by the identical attorney whom filed the fraudulent pleadings in court record, despite these affirmative facts, trial court ignored Petitioners pleas, erroneously dismissed Petitioners lawsuit with prejudice.

The court further noted in its dismissal ruling, "Plaintiffs has presented no justification for ignoring the court orders on these matters". The facts must be abundantly clear, such declaration, with respect to the courts comment is legally deficient, on the concept, Petitioners complied with the courts legal orders, however, what the trial court failed to take in consideration, is the fact that, no relevant evidence constituting dismissal with prejudice was submitted by Respondent and had trial court convene a hearing as previously ruled, revelation pertaining to Respondents attorneys deceitful acts would have revealed, further prohibiting dismissal. See Southern RY Company V. Fleming, 141 Ga. 69 (2), 80 S.E. 325 (1913). In this case, defendant re- affirmed, "Because there is no burden of proof on Defendants, in such case, it is proper to say,

the burden of proof upon the case in a whole is upon Plaintiffs." Furthermore, when a court ruled on a "motion to dismiss", the task upon the court is a limited one. The law in general places the burden and liability in the preponderance, upon the party seeking dismissal" See Schever v. Rhodes 416 U.S. 232, 235, 94 S. C.T 1683, 1686 40 l. Ed 2d (1974); Jenkins v. Mckeithen 395 U.S. 411, 421-22 89 S. CT. 1843 1844-49 23 L. Ed. 2d 404 (1969); Concord labs v. Ballard Media Product (NH. 1988). [2]

111. TRIAL COURT VIOLATED PETITIONERS FIRST AND FOURTEENTH AMMENDMENT RIGHTS

The right of a litigant to fairly and equally present their case in court is fundamentally significant to the material outcome of the case. Petitioners maintained, the motion hearing of July 18th 2005 herein, portrait-convincing evidence of biasness/ prejudices, discrimination, human callousness, towards Petitioner in open court. These acts transpired despite trial court's obliviousness to facts and circumstance occurred during courts adjournment. Contrary to the law, the court violated Petitioner freedom of speech,

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[2] Petitioner's reliance (Scheuer v. Rhodes, 416 U.S 232 (1974), Jenkin v. Mckeithen, 395 U.S 411, 421- 22 89 S CT. 1843, 1849- 49, 23, L. ED, 24, 404 (1969), Concord Labs v. Ballard Medical Product (N.H. 1988). The decision concerning the issue whether a court can grant a "motion to dismiss" is a limited one. The standard of granting such motion is not whether or not a plaintiff will ultimately prevail on the merit, but whether the claimat is entitle to offer evidence to support the claim. A complaint should not be dismissed unless it appears beyond a doubt, the appellant can prove no sets of facts in support of his claim, which would entitled his to relief. The trial court erroneously misapplied the law is granting Respondents motion to dismiss. The question before this court is; under what authority of law trial court acted.

declaring the allegations of counsel for Respondents ultimate facts. Petitioners further contend that borderline defenses, pro-se litigants are entitled to the mantle of the full constitutional protections of freedom of speech under the first and fourteen Amendment, unless the conduct of the exhibitors was such as to encroach upon the rights of others whose responsibility it was for the State of Georgia to protect through its' legal processes. In this regards, Petitioners was relying on the words of law, carefully set forth in the code of Judicial Conduct on page 1173 through 1184 where it is written. Cannon 3: "Judges shall perform the duties of judicial office impartially and diligent" and subsection (b) "Judges shall be faithful to the law and maintain professional competence in it. Judges shall not be swayed by partisan interest, or fear of criticism; "judges shall be patient, dignified and courteous to litigants, lawyers, and others they deal in their official capacity of the law, and shall require similar conduct of lawyers, court officials, and others subject to their direction and control.

Judges shall accord to every person who has a legal interest in a proceeding, or that person lawyer, the right to be heard according to the law. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding. Trial judge may summon and examine witness of its own choosing, thought the court must employ extreme caution to prevent expressing or even intimating an

opinion on the veracity of the witness or significance of the testimony".

Contained in their briefs filed with the higher courts, Petitioners urged the courts that the legal instructions contained in the code of judicial conduct, which is the governing foundation of judges conducts, was particular applicable where the issues of ones fundamental rights forcible under the 14 amendment of the constitution of the United States, as fallows;

"No state shall make any laws which shall abridge the privileges of citizens of the United States.

In the first place, as heretofore noted, there is no proof and there can be no claim made by trial court and Respondents State Farm, which would justify the repeated and un-lawful violations of Petitioners constitutional rights. The blatant deprivation of Petitioners freedom of speech, exploding upon Petitioner in open court repeatedly, threats of sanction is Petitioner insisted on been heard. The un-provoked and wrongful infliction of public humiliation, intimidation, and trepidation upon Petitioner, which was anarchically and willfully imposed, deemed inexcusable, as a matter of fact and law.

With respect to the courts recusal decision, untimely and inadequately perfected, honorable judge David Darden did not dispute the fact that he exploded upon Petitioner in open court, and also proceeded to rulings without allowing Petitioner an opportunity to defend the false allegations brought against her by counsel for Respondents during the courts legal proceeding,

instead, Your Honor provided an incomplete response "Plaintiff motion set forth a claim that the court mistreated her during the July hearing by instructing her not to interrupt the court or opposing counsel during the hearing. Plaintiff alleges the court exploded upon her and refused to read her **numerous** briefs and filings." However, what your honor failed to recognized court transcript and letter from independent witness whom witnessed these blatant abuses will substantiate Petitioners claim. A copy of said letter from independent witness filed in court record, hereby reproduced and affixed hereto as Appendix "C".[3]

The laws and constitution of the United States, summoned our judicial officers with the highest standards of integrity and legal convictions. U.S.C. Title 18, Section 241 "Conspiracy against Rights", and Title 18, U.S.C., Section 242 "Deprivation of rights under color of law", declared such acts un-lawful, in some instances a federal crime, for anyone acting under color of law, statue, ordinances, to inflict inhumane acts as devastated as those inflicted upon Petitioner, a litigants whom have interest in legal proceedings.

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[3] At the duration, July 18th motion hearing, Petitioner severely deprived her fundamental rights to fairly and accurately defend false allegations brought forth by Respondent counsel in lengthily fashion. Trial judge proceeded to rulings without allowing Petitioners opportunity to defend the allegations. Petitioners patiently, respectfully, requested opportunity to address those issues. Your Honor exploded upon Petitioner repeatedly, resulted in the wrongful infliction of public humiliation, intimidation, and fear upon Petitioner. These injustices were wrongly inflicted at the recommendation of Respondent counsel. Petitioner also maintained, trial court scheduled their case as the final case on the courts calendar, at both hearings held on 04-11, and 07- 18, insuring all other cases were resolved, however the court overlooked the presence of Mr. Forrester (independent witness) whom witnessed the abuses. The witness subsequently, mailed a letter to the court, which was later filed in court record, see appendix c.

The issue to be precisely recognized is citizens fundamental rights to freedom of speech, that have contributed greatly to the development and well- being of our free society, fundamentally indispensable to its continued growth. Under no standards should trial judge and counsel conspire to violate the rights, freedom, and immunities, of another individual whom rights is protected under the provisions of the laws and Constitution of the United States.

A. THE TRIAL COURT JUDGE AND RESPONDENT COUNSEL CONDUCT VIOLATED THE RULES OF LAW.

The Georgia Rules of Evidence § 2.3 on page 18 where it is contained, "the trial judge has the rights to expect courtesy and consideration from counsel and has the duty to provide such courtesy in return... The trial judge is "more than a mere chairman preserving order at a meeting, he is a minister of justice with a duty to govern the process of the trial". The trial judge has basic supervision over the courtroom and the general presentation of witness, but caution, that authority must not be used to deny a party the opportunity to properly and fairly present his case, see *Henry v. State* 265 Ga. 732, 462 S.E.2d 737 (1995). Having in mind the constitutional constriction of willful misconduct, it would appear that during the courts legal proceedings, the superiors of the law would preserve its integrity, precluding ignominy, trepidation, bigotry, towards litigant who's right it was to attend.

The Georgia Rule of Evidence, § 2.2, pages 11 & 12 where it is instituted, stated, "The primary responsibility for developing and guiding a case through our legal system lies squarely on the lawyer.

Counsel has a duty to represent a client zealously within the bounds of the law; however, the Georgia Rules of professional Conduct contains a number of basic provisions regarding the conduct of counsel.

Preamble (4) Forbids lawlessness and inappropriate behavior from lawyers, states as follows; A lawyer should use the law procedures only for legitimate purposes, and not to harass and intimidate others.

A lawyer should demonstrate respect for the law and the legal system.

While it is a lawyer's duty, when necessary to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Rule 3.1 **(Mauritius claim and Contentious)**

In the representation of a client, a lawyer shall not file a suit asserting a position, conduct or defense, delay a trial, or take other claim action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 3.3 **(Condors towards the Tribunal.)**

A lawyer shall not knowingly;

(1) Make a false statement of material fact to a tribunal.

(2) Fail to disclose a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

Legal argument based on a knowingly false representation of law constitutes dishonesty to the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a) 3 an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction, which has not been, disclose by the opposing party. The underlining concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case. In Vaughn v. State, 274, Ga. 13, 15,549, S.E 2d, 86 (2001). ("Trial counsel is precluded from assisting his client in presenting perjured testimony"). Also, In re C.G.B., 242 Ga. App. 705, 531 S.E. 2d 107 (2000). ("Attorneys have an affirmative obligation to accurately state the fact and ... failure to do so may subject them to fines for contempt.) In this case, Nanan v. State Farm Fire & Casualty Company, Respondent State Farm's attorney's conduct substantially, dishonored the laws he was avowed to safeguard, as the attorney sworn falsely under oath, filed false pleadings in court record repeatedly, tampered with material evidence, by concealing essential evidence from the court, thus, obtained relief against Petitioners by fraudulent means. Petitioners indisputable insisted, the actions of Respondents counsel constitutes abominable sins, and that such acts are punishable under the law, guided pursuant to Title 18 > part 1 > chapter 79 > § 1621 (perjury), also stated, § O.C.G.A. 24-9-85 (GCA) 38-1805, "Falsus in uno. Falsus in omnibus." Translated as, "He who speaks falsely in one thing will speak

falsely in everything;" False pleading, false swearing. Blacks Legal Dictionary also interpreted "perjury" as "The act or an instance of a person making false or misleading statement while under oath". As a result of the attorney's mendacious acts, Petitioners were compelled to file a copy of the deposition transcript in court record. In the first place, it was the statutory ingenuous obligations of Respondents attorney to do so in compliance with the law. The laws in essence, also declares repeated failures to dispute accusations, constitutes admission on the part of the party whom failed to challenge.

B. THE APPELLATE COURT VIOLATED PETITIONERS RIGHTS TO DUE PROCESS.

The issues herein, brought on appeal with the Appellate court of Georgia, docketed in court record on 12-30- 2005, bearing appeal case # A06A0916. Both Petitioners and Respondent filed motions/ briefs into said appeal case record. Petitioners maintained those nine months into its duration, appellate court violated Petitioners fundamental rights to due process of law, failing to issue a ruling on the merit of the case, whilst, divergently remanding the case back to the lower court, based on allegations of "missing transcript", casting a lingering shadow on Petitioners ability to obtain due process relief through judicial processes. Such act is divergent to the rules of law as appellate court is forbidden by law to dismiss a pending case from its court, missing a ruling on its merit, in the course of remanding said dismissed case back to the lower court.

The facts must be abundantly clear as heretofore stated, those allegations of "missing transcript", the appellate courts sole reason for remand, re-docketing, dismissal, contain falsity and deception. Lower court, Cobb County State Court, whose responsibility it was to transmit transcript of record to appellate court, substantially, disputed the statement of "missing transcript", elucidating the record that the transcript in question was never missing from court record, as falsely alleged by Appellate court order, thus declaring the court order un-lawful and legally ineffective. The standards herein, in accordance to the doctrine of Appellate Court, are neither supported in fact nor law, on the basis, transcript of the July hearing, which has mysteriously vanished from court records, so alleged by the appellate court, was the very transcript which reveals the un-lawful ordeal, wrongfully inflicted upon Petitioner in open court, at the hands of Respondent counsel and trial court judge. The engagements of the appellate court herein, in its conspitatory nature, poses grave question, whether appellate courts true intention was to conceal the acts of trial court judge and Respondent counsel, in their ungovernable acts, to somehow hinder Petitioners attempt to achieve revelation and also impede accomplishment through appellate procedures. Petitioners contend, most minuscule, the laws, in essence, declares such action corrupt.[4]

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[4] The laws in all cases stringently prohibit the perfection and mailings of factitious court orders, especially under genuine circumstances where the court is bounded by law to preserve a case from dismissal. Appellate court concealed these un-lawful acts, willfully constructing defenses which later revealed to be false, due to evidence obtained from the lower court which explicated the record, "transcript was never missing from court record". Such

The law strictly prohibits and imposes significant legal consequences in cases surrounding improper perfection of fictitious court orders, and also places the burden and responsibility upon clerk of trial court, to transmit transcript of records to appellate court, also, clearly outlaying the duties and responsibilities of appellate clerks in persevering appeal from dismissal, under genuine circumstances concerning missing transcript.

The facts must be stated initial as heretofore. Petitioners tendered funds in excess of $400.00 (four hundred dollars) in court fees for the transmitting of transcript and records to appellate court, in support of their appeal, and obtained proof via United States Postal Service, those documents were transmitted in accordance with the provisions of § O.C.G.A.5-6-43.

Pursuant to the provisions of §O.C.G.A. 5-6-43, unless otherwise provided, "Within 5 days after the date of filing of the transcript of evidence and proceedings by the Appellant or Appellees, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete copy of the entire record of the case, omitting only those things designated for omission by the Appellant and which were not designated for inclusion by the Appellee, together with a copy of the notice of appeal and copy of any cross notice of cross appeal, with date of filing thereon, and transmit the same, together with the transcript of evidence and proceedings.

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illicit acts were repeated by appellate court, as further illegitimate court orders were perfected, ruled upon, and mailed to Petitioners, via U.S. mail. See Appendix "G & H".

It is imperative for this court to determine, therefore, whether the dismissal, remand, re-docket of Petitioners appeal case by the Appellate Court is justifiable in the legal and constitutional sense, delineated pursuant to § O.C.G.A.5-6-48, subsection (d). In order for the United States Supreme Court to reach such determination, the pertinent provision of the governing statue mentioned herein, and can be found on pages 28 & 29 of the Georgia Court Rules and Procedures, where it is instituted.

"At any stage of the proceedings, either before or after argument, the court shall by order, either with or without motion, provide for all necessary amendments, require the trial court to make corrections in the record or transcript, or certify what transpired below which does not appear from the record on appeal, require that additional portions of the record or transcript of evidence be sent up, or take any other action to perfect the appeal and record so that the Appellate Court can and will pass upon the appeal and **not dismiss it.**" In addition, Appellate Rule 11 (a), which is contained on page 598 of the Georgia Court Rules and Procedures stated, "No appeal shall be docketed until the notice of appeal and a record, and transcript, if requested, is filed in the clerk's office".

Emphasis should be drawn to the statement contained in Rule 11 (a), as Petitioners appeal case was pending a ruling on its merit, 9 months (nine months) prior to its premature dismissal. In a statutory, logical sense, if appellate court was candid in its claim of "missing transcript" it would be impossible for appellate clerk to ignore, in its initial stages of docketing, transcript of record was

missing from court record, and he would have not procrastinated nine months to take action. Furthermore, the facts must be stressed, the actions taken in this case was inappropriate, constituting reversal err; on the notion that a pending case cannot be dismissed absent a ruling on its merit. Secondly, in the first place, it was the appellate clerk's responsibility to preserve the case from dismissal in compliance with O.C.G.A 5-6-48.

The legal danger herein, is the fact that appellate court clerk un-authorized re-docketed the appeal case regardless of Petitioners timely filed "notice of intent" to petition to the Supreme Court of Georgia for certiorari, which would have legally stayed re-docketing, which is unwarranted in this matter. The record of the Appellate Court reveled Petitioners "notice of intent" was filed in court record on 08-22-06, a period of 7 days, prior the courts re-docketing. The actions of the appellate clerk herein, displayed clear acts of presumptuous violations, as the outcome of such incongruities resulted in the un-lawful creation of multiple appeal cases, representing the same issue simultaneously. Most erroneously, the newly docketed appeal case was perfected on August 30 2006, reprehensively displaying a 2007 docket number (A07A0119), abhorrent to the rules of laws, as the state of Georgia like all states required all cases docketed in its courts, to be concurrent with the year it was perfected, under a single case file. Under no possible standards should the Appellate court be involved in such loathsome deprivation of individual civil rights, while the

law necessitate safeguard in the interest of Petitioners under the laws and constitution of the United States.

C. THE APPELLATE CLERK ABUSED HIS AUTHORITY AND ALSO INVOLVED IN ILLICIT MISCONDUCT.

The facts must be noted initial as heretofore, since the initial stages of the appeal, Clerk, William Martin III abused his clerical authority, adopting conflicting principles, aimed at hindering Petitioners of their abilities to fairly achieve due process advancement, ensuring dismissal of Petitioners law-suit by illegitimate measures. In a letter mailed to Respondents counsel in February 2006, appellate clerk falsely informed Respondents attorney, "Petitioners appeal case was untimely filed and contained too many pages", prompting Respondents counsel to file a motion with the court seeking dismissal of the appeal. When this attempt failed, further steps were taken, as demonstrated on 08-16-06. Such dishonest scheme succeeded as Petitioners appeal case dismissed on fraudulent allegations of "missing transcript".

Confronted on these issues, the clerk attempted to sanitize his acts; perfecting and filing multiple fictitious motions into the newly docketed appeal case, as attempt to dissolve the case. Because the law requires a plaintiff to file motion requesting dismissal of his own case, and prohibits court clerk to doing the same, clerk Martin III, constructed these filings, under fraudulent pretenses, the documents filed, were the actions of Petitioners. In actuality, no such documents were filed by Petitioners. These un-lawful acts resulted in the un-lawful creation of multiple illicit court orders,

ruled upon and mailed to Petitioners via U.S mail, thus constituting fraud and mail fraud. The law declares such acts disingenuous, as in the first place, said appeal case was illegitimately perfected by the clerk, utilizes un-lawful means in dissolving a case he has illegitimately created; intolerable on the basis, these acts were instigated in the best interest of Respondent State Farm Fire & Casualty Company. Copies of the illicit documents are re-produced and affixed, hereto as Appendixes "G" and "H".

THE ISSUES PRESENTED ARE OF GRAVETY AND SIGNIFICANT NATIONAL IMPORTANCE.

The extent of these violations severely perverse, prompted Petitioners to file complaint with Justice Ruffin, (chief justice of the Appellate court) and Justice Sears of the Supreme Court. Both justices declined intervention. Further complaint was filed with the Federal Bureau of Investigation, requesting internal investigation. It is amazing, under the supervision of the Appellate Court, clerk Martin III was obliged privileges blatant as described. Petitioners contend, most miniscule, the law declares the action of the appellate court lawless, a conflict of interest; as such conduct serves no other purpose but the interest of Respondents State Farm Fire & Casualty Company, while on the other hand, substantially desecrated Petitioners ability to obtain equality and justice through judicial remedies. Presently, there is no legitimate appeal case file pending, under which this appeal case matter can be resumed. Despite these facts; Supreme Court of Georgia denied certiorari, under such gravely, important circumstances, in the absence of a statutory

decision. Ultimately, Petitioners are inadequately vulnerable to the illegitimate acts of the courts and Respondent herein. The law declared these injustices un-lawful; poses severe dangers to litigants in the permissible sense, as thorough review of all cases brought before the appellate and supreme courts, in the past three years or beyond, revealed Petitioners circumstances comparable to no other cases ruled upon by the courts. Case laws and researches revealed exceptional differences in similarity with other cases, and for these legitimate reasons, Petitioners respectfully urge this court; grant Petitioners relief in a precedent setting, reference for future litigants to pursue.

Certainly, under the procedural Due Process decisions of the courts, the ad hoc procedure sought to be invoked by the trial court and the appellate court, is clearly constitutionally deficient and repugnant to the Universal Declaration of Human Rights, the first and fourteenth Amendment to the constitution of the United States within the context of the exercise of first and fourteenth Amendment freedom. The courts herein, held a standard that their transgressions, some how does not affect the material outcome of the case, profoundly violated Petitioners constitutional rights, substantially, blemished Petitioners faith in the judicial system. Whether such standards satisfy constitutional requirements, it is submitted, a substantial question.

The laws of our land was implemented to allow all Americans regardless of color, race, national origin, their fundamental rights to a fair and equal process of the law, commonly referred to as "due

process". It is prohibited for any individual, courts, attorney, to hinder or impede ones ability to obtain those blessings so rightfully bestowed by the laws of the constitution of the United States, which is the life support of our free and modern society. To violate the very standards which governs and regulates the pathways of our fore fathers, current justices, individuals, congressional caucuses, courts, is like shutting out the lights to freedom, equality, fundamental values, which will only harbors, dehumanizing conducts, such as discrimination, prejudices, bondage, oppression, un-equality, which possesses no legally constructive value in our liberated society.

CONCLUSION

Petitioners have exhorted every possible legal avenue in their pursuit for judicial liberation and were severely deprived/ hindered of their rights to obtain equality and justice, or to freely acquire "due process" remunerations. For many years, our society shown enormous faith in the United States Supreme Courts impartiality, extend in the entirety of cases decided, meticulously reviewed, not all cases are legally worthy of relief. The courts in general, have a particular standard in determine judicial eligibility, worthiness of certiorari, based on circumstance of individual case. However, this case, Nanan V. State Farm Fire & Casualty Company, bears sensational traits in its unique judicial criteria therefore, worthy of warranted relief.

Should this court declined Petitioners merited request, the hard struggles, audaciousness, persistence, not excluding the

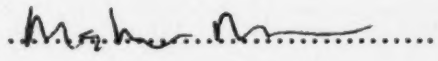
presumptuous abuses, wrongful violations, incurred at the hands of the lower court, appellate court, counsel for Respondents, specifically, the blatant and lawless deprivation of Petitioners constitutional rights, would go un-accounted, as this maybe Petitioners final recourse. As a result of the palpable miscarriage of justice, Petitioners are left judicially crippled; with no other recourse but to hunt for the essential relief so desperately seek, before the United States Supreme Court, under such inadequate conditions. Under the circumstances, Petitioners respectfully emphasized the importance that a writ of certiorari is granted in this matter, as the unguided decisions of the courts have cast a dark and tedious shadow on Petitioners ability to obtain equality before the courts.

It is vitally imperative that this court demonstrate effectiveness and credibility towards litigants whom have interest in the court of law, in order to insure that these mentioned injustices at the lower courts level does not prevail. Such action will promote the publics faith in the integrity and fairness of the legal system, promote other justices and courts, to be more careful, restore impartiality to litigants in the judicial process, and most significant, secures the relief that Petitioners so rightfully deserves.

It would be appreciated, and imperative, should this court declined certiorari, a legal jurisdiction determined, as to where the case to be resumed, is necessary, as due to Appellate Courts delinquencies future jurisdiction in this matter is unclear.

WHEREFORE, for the reasons set forth in the petition herein, it is respectfully urged that the petition for a writ of certiorari be granted.

Respectfully, submitted this 1st day of May 2007.



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